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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ADAM R. STULL,

Plaintiff and Respondent,

v.

FEDERICO GARCIA et al.,

Defendants and Appellants.

G039673

(Super. Ct. No. 04CC01660)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel J. Didier, Judge. Appeal dismissed.

Shawn R. Perez for Defendants and Appellants.

Law Offices of Ronald Richards and Associates, Ronald Richards and E. Christine Hehir for Plaintiff and Respondent.

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The only issue in this appeal is whether an order vacating an arbitration award pursuant to Business and Professions Code section 6200, et seq. is a final appealable order that must be promptly appealed. Because we find that it is, we dismiss the instant appeal. We deny respondent's motion for sanctions.

## I

### FACTS

In November 2003, Federico and Leticia Garcia (the Garcias), pursuant to Business and Professions Code section 6200, et seq., filed a petition for attorney fee arbitration with the Orange County Bar Association. They were involved in a fee dispute with their attorney, Adam Stull. The hearing took place in September 2004. On October 11, the panel issued an award to the Garcias of \$150,000 (the return of their attorney fees) and \$3,524 in filing fees. Notice was given on November 9, 2004.

On December 14, Stull filed a petition to vacate the award, which the Garcias opposed. In February 2005, Stull filed a complaint alleging causes of action for declaratory relief and violation of Penal Code section 632 (recording confidential communications.) The Garcias also filed a petition to confirm the arbitration award.<sup>1</sup>

After a hearing, in March, the court granted Stull's petition to vacate the award and denied the Garcias' petition to confirm. The Garcias did nothing to appeal this order. In December 2006, the Garcias filed a motion for reconsideration of Stull's earlier petition to vacate the award, or alternatively, request dismissal of Stull's complaint for lack of jurisdiction. The Garcias also filed a new petition to confirm the arbitration award. Both were denied. On January 9, 2007, the Garcias apparently filed a cross-complaint, although it is not part of the record.

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<sup>1</sup> The petition to confirm is not in the record, but it is referenced in a notice of ruling.

A bench trial took place in October 2007. The court found for Stull on the cross-complaint and for the Garcias on the complaint, in other words, no compensation was awarded to either party. The Garcias now appeal, claiming the trial court had no subject matter jurisdiction to hear the complaint. They request remand for the confirmation of the original arbitration award in their favor, and seek attorney fees and costs on appeal. Stull filed an opposing brief as well as a motion to dismiss and two motions seeking sanctions against the Garcias for filing a frivolous appeal.

## II

### DISCUSSION

Both parties agree that the standard of review in this case is de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

The Garcias frame this appeal as follows: “The sole question presented on appeal is whether the trial court had subject matter jurisdiction over this matter when [Stull] failed to file his petition to vacate and/or file a complaint within the 30 days required by Business and Professions Code sections 6200 et seq.” Because Stull’s motion to vacate the arbitration award was filed more than 30 days after the award was served, they claim, the trial court had no jurisdiction to entertain Stull’s complaint (or, apparently, their own cross-complaint) and proceed to a bench trial.

The Garcias’ claim of a lack of subject matter jurisdiction, however, is simply another way of attacking the trial court’s grant of Stull’s motion to vacate the arbitration award. If the motion to vacate was filed too late, that was grounds for denial of Stull’s motion. According to the statutes governing mandatory attorney fee arbitration, procedures for confirming or vacating an award are controlled by Code of Civil Procedure section 1285, et seq. According to Code of Civil Procedure section 1294, subdivision (c), an order vacating an arbitration award (unless rehearing is ordered) is a

final appealable order. Thus, the court's March 2005 order vacating the arbitration award was a final appealable order.

At the latest, a notice of appeal from a final order must be filed within 180 days of the order. (Cal. Rules of Court, rule 8.104.) The trial court's order was filed on March 15, 2005. The Garcias did not file their notice of appeal until December 10, 2007. The time to appeal has thus expired and regardless of whether the trial court was wrong in granting Stull's motion to vacate, we cannot entertain an appeal on the basis of that error — or indeed any appeal based on that order. We therefore grant Stull's motion ordering the appeal dismissed.

With respect to Stull's motions for sanctions, the motions are denied. Sanctions may be appropriate for a frivolous appeal. (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431-1432.) "Our Supreme Court in *In re Marriage of Flaherty*, *supra*, 31 Cal.3d 637, set forth the applicable standard: 'an appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]' [Citation.]" (*Id.* at p. 1432.) Stull, however, does not fully develop an argument on any of these grounds. The essence of his argument appears to be that the appeal was frivolous because the Garcias were wrong. This is insufficient to meet the relevant standard for sanctions. Therefore, the motions for sanctions are denied.

### III

#### DISPOSITION

Stull's motion to dismiss the appeal is granted. Stull is entitled to his costs on appeal. Stull's motions for sanctions are denied.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.